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Attorney Docket Number: FSP0154  
Application Number: 09/653,039

-9-

### REMARKS

In an office action mailed on 02/09/2007, claims 71, 73, 74, 76-78 are rejected as non-statutory under 35 USC 101, but would be allowed if re-written to overcome this rejection.

Claims 53, 61, 65, 71, 79, 80, 81, and 82 are rejected under 35 USC 102(e) as anticipated by Shaffer, US 5995490.

The remaining pending claims would be allowed if re-written as independent claims with all the limitations of the intervening claims.

Claim 71 has been amended to address the Office's concerns regarding 35 USC 101.

The rejection in view of Shaffer is traversed below.

#### **Claim 71 is Statutory Subject Matter**

Claim 71 (and likewise, the dependent claims thereof) recites several physical actions which make it firmly statutory under 35 USC 101, and the MPEP guidelines. Specifically, claim 71 recites (1) putting a client-requested presentation action into effect, with (2) the result that the rate of the audio data of the first audio/visual stream to the client is changed, and (3) changing the video streaming rate of the second audio/visual data stream according to the amount.

#### **Rejection of Claims 53, 61, 65, 71, 79, 81 and 82 as Anticipated by Shaffer**

Shaffer describes a situation where video is being provided and a user initiates occasional data transfers. Shaffer describes how, in some circumstances, bandwidth may be borrowed from the video stream in order to service the data transfers. The Abstract of Shaffer provides a concise and thorough description of the Shaffer application.

Claims 53, 65, 71, 79, 81 and 82 describe a client requested presentation action that, when put into effect by a stream server, involves reducing (or increasing) a data rate of audio data of a

Attorney Docket Number: FSP0154  
Application Number: 09/653,039

-10-

first audio/visual stream, and determining an amount that a data rate of a second audio/visual data stream may be increased (or decreased) as a result.

Notice that the two situations are different. In Shaffer, there is a single ongoing video stream. A request for data comes next, while the video stream is ongoing. The video stream bandwidth is cut to accommodate the data transfer. The data transfer then starts.

The claims recite a situation where there are two or more ongoing audio/video streams. A presentation action occurs during streaming of two or more audio/video streams. The presentation action specifically affects the audio data rate of one of the ongoing streams. Either the audio data rate is reduced, or it is increased. In any case, it is an action that affects the data rate of audio of an ongoing audio/video stream. The bandwidth available to the second audio/video stream is then adjusted to account for the change to the audio rate of the first stream.

Shaffer does not describe a situation where the audio bandwidth changes to a first ongoing audio/video stream are applied to a second ongoing audio/video stream. Instead, Shaffer describes borrowing bandwidth from an ongoing video stream to enable a data stream to be started. The two situation are quite different, so that Shaffer clearly does not and can not anticipate the claims.

Claim 82 further recites providing a stream of packets as part of a packet flow to a multiplexing device, and operating the multiplexer to perform filtering to reduce or eliminate the data rate of the audio data. This limitation is in other claims which the Office has indicated would be allowed in independent form. Thus, it would appear that claim 82 should be allowed as well.

Claims 61 and 80 also describes a different situation than Shaffer. These claims describe implementing the client requested presentation action that reduces the data rate of audio or video data of an ongoing audio/visual stream, or eliminating the transmission of the audio or video data of the ongoing audio/visual stream. A determination is then made whether a new audio/visual stream may be started as a result of the effect on transmission bandwidth, e.g. is enough bandwidth for another audio/visual stream freed up by implementing the presentation action?

Shaffer does not describe a situation where the audio bandwidth changes to a first ongoing audio/video stream, resulting from implementing a presentation action on the stream, are applied to determine if another audio/video stream can be started. Instead, Shaffer describes changing the bandwidth of an ongoing video stream in order to have enough bandwidth to start a data stream. In other words, in Shaffer the driving action is not implementation of a presentation action to an

Attorney Docket Number: FSP0154  
Application Number: 09/653,039

-11-

ongoing video stream. The driving action in Shaffer is a client request for another data stream in addition to the ongoing video stream. In essence, the two situation are reversed. In Shaffer, the action that drives the bandwidth reduction in the ongoing stream is the client request for another data stream. In the claims, the action that drives the reduction in the bandwidth of the ongoing audio/visual stream is a presentation action to the ongoing audio/visual stream. Then, a determination is then made whether enough bandwidth is freed by implementing this presentation action to the ongoing stream to enable yet another stream to be started. The two situations are quite different, so that Shaffer clearly does not and can not anticipate the claims.

In view of the above amendments and remarks, applicant believes that this application is now in condition for allowance. Applicant respectfully requests that a Notice of Allowability be issued covering the pending claims. If the Examiner believes that a telephone interview would in any way advance prosecution of the present application, please contact the undersigned.

Signature /Charles A. Mirho/ Date: Thursday, November 09, 2006  
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